

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Nehemiah Kong,

Plaintiff,

v.

Cold Scoops, Inc., a California
Corporation; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Nehemiah Kong complains of Defendant Cold Scoops, Inc., a California Corporation; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who suffers from Polio. He uses a wheelchair for mobility. He has a specially equipped van with a ramp that deploys out of the passenger side of his van.

2. Defendant Cold Scoops, Inc. owned the Cold Stone Creamery located at or about 9971 Chapman Ave., Garden Grove, California, in February 2018.

1 3. Defendant Cold Scoops, Inc. owns the Cold Stone Creamery located at
2 or about 9971 Chapman Ave., Garden Grove, California, currently.

3 4. Plaintiff does not know the true names of Defendants, their business
4 capacities, their ownership connection to the property and business, or their
5 relative responsibilities in causing the access violations herein complained of,
6 and alleges a joint venture and common enterprise by all such Defendants.
7 Plaintiff is informed and believes that each of the Defendants herein,
8 including Does 1 through 10, inclusive, is responsible in some capacity for the
9 events herein alleged, or is a necessary party for obtaining appropriate relief.
10 Plaintiff will seek leave to amend when the true names, capacities,
11 connections, and responsibilities of the Defendants and Does 1 through 10,
12 inclusive, are ascertained.

13
14 **JURISDICTION & VENUE:**

15 5. This Court has subject matter jurisdiction over this action pursuant to
16 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
17 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18 6. Pursuant to supplemental jurisdiction, an attendant and related cause
19 of action, arising from the same nucleus of operative facts and arising out of
20 the same transactions, is also brought under California's Unruh Civil Rights
21 Act, which act expressly incorporates the Americans with Disabilities Act.

22 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
23 founded on the fact that the real property which is the subject of this action is
24 located in this district and that Plaintiff's cause of action arose in this district.

25
26 **FACTUAL ALLEGATIONS:**

27 8. Plaintiff went to Cold Stone Creamery in February 2018 to buy ice
28 cream.

1 9. Cold Stone Creamery is a facility open to the public, a place of public
2 accommodation, and a business establishment.

3 10. Parking spaces are one of the facilities, privileges, and advantages
4 offered by Defendants to patrons of Cold Stone Creamery.

5 11. Unfortunately, there were no van-accessible parking stalls marked and
6 reserved for persons with disabilities located in front of Cold Stone Creamery
7 on the day of plaintiff's visit.

8 12. The only parking stall reserved for persons with disabilities in front of
9 Cold Stone Creamery measured 104 inches in width while the access aisle
10 measured 55 inches in width on the day of plaintiff's visit. This is not van
11 accessible.

12 13. There are currently no compliant, van-accessible parking spaces at the
13 Cold Stone Creamery.

14 14. Defendants have failed to maintain in operable working condition those
15 features of facilities and equipment that are required to be readily accessible to
16 and usable by persons with disabilities at the Subject Property.

17 15. Meanwhile, even though there are other van-accessible parking spaces
18 marked and reserved for persons with disabilities in the shopping center, those
19 parking spaces do not serve Cold Stone Creamery.

20 16. Indeed, if plaintiff wanted to use other the van-accessible parking
21 spaces marked and reserved for persons with disabilities in the shopping
22 center, he would have to travel behind parked cars as well as travel with cars in
23 the vehicular drive paths to make it back to Cold Stone Creamery. This is not
24 accessible to plaintiff.

25 17. Plaintiff personally encountered these barriers.

26 18. This inaccessible parking lot denied the plaintiff full and equal access
27 and caused him difficulty, discomfort, and embarrassment.

28 19. Paths of travel are another one of the facilities, privileges, and

1 advantages offered by Defendants to patrons of Cold Stone Creamery.

2 20. Meanwhile, and even though plaintiff did not personally confront the
3 barrier, the path of travel to the transaction counter is obstructed by a soda
4 machine that narrows the path of travel to less than 36 inches in width. In fact,
5 the path of travel narrows to 24 inches wide.

6 21. Plaintiff plans to return and patronize Cold Stone Creamery but will be
7 deterred from visiting until the defendants remove the barriers.

8 22. The defendants have failed to maintain in working and useable
9 conditions those features required to provide ready access to persons with
10 disabilities.

11 23. The barriers identified above are easily removed without much
12 difficulty or expense. They are the types of barriers identified by the
13 Department of Justice as presumably readily achievable to remove and, in fact,
14 these barriers are readily achievable to remove. Moreover, there are numerous
15 alternative accommodations that could be made to provide a greater level of
16 access if complete removal were not achievable.

17 24. For example, there are numerous paint/stripe companies that will stripe
18 a van accessible parking stall and access aisle and install proper signage on
19 short notice and for a modest price, sometimes as low as \$300, in full
20 compliance with federal and state access standards.

21 25. Plaintiff is and has been deterred from returning and patronizing Cold
22 Stone Creamery because of his knowledge of the barriers that exist. Plaintiff
23 will, nonetheless, return to the business to assess ongoing compliance with the
24 ADA and will return to patronize Cold Stone Creamery as a customer once the
25 barriers are removed.

26 26. Given obvious and blatant nature of the barriers and violations alleged
27 herein, the plaintiff alleges, on information and belief, that there are other
28 violations and barriers on the site that relate to his disability. Plaintiff will

1 amend the Complaint to provide proper notice regarding the scope of this
 2 lawsuit once he conducts a site inspection. However, please be on notice that
 3 the plaintiff seeks to have all barriers related to his disability remedied. See
 4 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 5 encounters one barrier at a site, he can sue to have all barriers that relate to her
 6 disability removed regardless of whether he personally encountered them).

7 27. Note: plaintiff, on information and belief, does not contend that the
 8 parking spaces are the responsibility of Cold Stone Creamery. Instead, the
 9 parking spaces, on information and belief, are the responsibility of the
 10 property owner, which is, for the moment, being named as a Doe defendant in
 11 this complaint. Plaintiff will seek leave to amend when the true names,
 12 capacities, connections, and responsibilities of the Defendants and Does 1
 13 through 10, inclusive, are ascertained.

14
 15 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 16 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiff and against all
 17 defendants (42 U.S.C. section 12101, et seq.)

18 28. Plaintiff repleads and incorporates by reference, as if fully set forth
 19 again herein, the allegations contained in all prior paragraphs of this
 20 complaint.

21 29. Under the ADA, it is an act of discrimination to fail to ensure that the
 22 privileges, advantages, accommodations, facilities, goods and services of any
 23 place of public accommodation is offered on a full and equal basis by anyone
 24 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 25 § 12182(a). Discrimination is defined, inter alia, as follows:

- 26 a. A failure to make reasonable modifications in policies, practices,
 27 or procedures, when such modifications are necessary to afford
 28 goods, services, facilities, privileges, advantages, or

1 accommodations to individuals with disabilities, unless the
2 accommodation would work a fundamental alteration of those
3 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

4 b. A failure to remove architectural barriers where such removal is
5 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
6 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
7 Appendix “D.”

8 c. A failure to make alterations in such a manner that, to the
9 maximum extent feasible, the altered portions of the facility are
10 readily accessible to and usable by individuals with disabilities,
11 including individuals who use wheelchairs or to ensure that, to the
12 maximum extent feasible, the path of travel to the altered area and
13 the bathrooms, telephones, and drinking fountains serving the
14 altered area, are readily accessible to and usable by individuals
15 with disabilities. 42 U.S.C. § 12183(a)(2).

16 30. Any business that provides parking spaces must provide accessible
17 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in
18 every eight of those accessible parking spaces but not less than one must be a
19 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991
20 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six accessible
21 parking spaces must be van accessible. 2010 Standards § 208.2.4.

22 31. Here, the failure to provide a van accessible parking is a violation of the
23 law.

24 32. There must be an accessible path of travel that connects all buildings,
25 elements and spaces on the same site. 1991 Standards § 4.3.2. The minimum
26 clear width of an accessible route shall be 36 inches. 1991 Standards § 4.3.3.

27 33. Here, the failure to provide an accessible path of travel is a violation of
28 the ADA.

1 34. Under the ADA, there must be at least one accessible route connecting
 2 every building on the same site. 1991 Standards § 4.3.2(2); 2010 Standards §
 3 206.2.2. Travel in the vehicular drive path with vehicles is not part of an
 4 accessible route.

5 35. Here, the failure to provide an accessible route is a violation of the law.

6 36. A public accommodation must maintain in operable working condition
 7 those features of its facilities and equipment that are required to be readily
 8 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

9 37. Here, the failure to ensure that the accessible facilities were available
 10 and ready to be used by the plaintiff is a violation of the law.

11 38. Given its location and options, plaintiff will continue to desire to
 12 patronize Cold Stone Creamery but he has been and will continue to be
 13 discriminated against due to the lack of accessible facilities and, therefore,
 14 seeks injunctive relief to remove the barriers.

15
 16 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 17 **RIGHTS ACT** (On behalf of plaintiff and against all defendants) (Cal Civ §
 18 51-53)

19 39. Plaintiff repleads and incorporates by reference, as if fully set forth
 20 again herein, the allegations contained in all prior paragraphs of this
 21 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
 22 that persons with disabilities are entitled to full and equal accommodations,
 23 advantages, facilities, privileges, or services in all business establishment of
 24 every kind whatsoever within the jurisdiction of the State of California. Cal.
 25 Civ. Code §51(b).

26 40. The Unruh Act provides that a violation of the ADA is a violation of the
 27 Unruh Act. Cal. Civ. Code, § 51(f).

28 41. Defendants’ acts and omissions, as herein alleged, have violated the

1 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
2 rights to full and equal use of the accommodations, advantages, facilities,
3 privileges, or services offered.

4 42. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
5 discomfort or embarrassment for the plaintiff, the defendants are also each
6 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
7 (c).)

8
9 **PRAYER:**

10 Wherefore, Plaintiff prays that this Court award damages and provide
11 relief as follows:

12 1. For injunctive relief, compelling Defendants to comply with the
13 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
14 plaintiff is not invoking section 55 of the California Civil Code and is not
15 seeking injunctive relief under the Disabled Persons Act at all.

16 2. Damages under the Unruh Civil Rights Act, which provides for actual
17 damages and a statutory minimum of \$4,000.

18 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
19 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

20
21 Dated: May 8, 2018

CENTER FOR DISABILITY ACCESS

22
23
24 By:



25
26 Chris Carson, Esq.
27 Attorney for plaintiff
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